

# Total Rewards Public Policy Update, May 2018

Melissa Sharp Murdock, Esq.  
Director, External Affairs

# Agenda

- Tax Reform: What wasn't included and what was...
- Additional Tax Issues:
  - Cadillac Tax Delay
  - Mobile Workforce Efforts
- Healthcare/Affordable Care Act Update
- Department of Labor Priorities
- Paid Leave
- Executive Compensation Issues
- EEOC's Strategic Plan
- U.S. Supreme Court
- Election Issues to Watch

# Tax Cuts and Jobs Act of 2017 (TCJA)

# Tax Reform: Overview

- Corporate tax rate lowered to 21 percent
- Sets 7 individual tax rates
- Increased standard deduction
- State and local tax deduction limited to \$10,000
- ACA individual mandate zeroed out in 2019

# Tax Reform: Overview

- All eyes are on wages!!!
- Will tax reform result in an increase to wages in the US? More jobs?
- Media is following this closely and reporting when large companies announce changes to bonuses, compensation, 401(k) match and leave benefits

# Tax Reform: What wasn't included...

- **No “rothification” for 401(k) contributions**
- **No change to tax treatment of employer-sponsored health care, employee exclusion remains intact**
- **No major changes to nonqualified deferred compensation**, including equity and stock options – provision 409B was included in the original House and Senate bills but removed from the final bill signed into law

# Tax Reform: Benefit Changes

- **401(k) Loan Repayment:** Act provides additional time to roll over 401(k) loan at termination of employment – individuals have until Oct. of the following year (due date for tax returns with an extension) to repay the loan
- **Transportation Benefits:** Eliminates employer deduction for qualified transportation fringe benefit
  - Expense of providing these benefits is no longer deductible by an employer
  - Exclusion for employees is not affected
  - Qualified bicycle reimbursements are suspended until 2026

# Tax Reform: Benefit Changes

- **Moving Expenses** – neither a deduction nor reimbursement is available for moving expenses incurred after 12/31/2017
- **Entertainment Expenses** - Disallows an employer's tax deduction for entertainment expenses
  - New 50% limitation on deduction for food and beverages that may be excluded from an employee's income – includes employer provided items such as coffee, donuts, and soft drinks
  - Eliminates deduction for cafeterias and meals furnished for the convenience of the employer on business premises beginning in 2026



# Tax Reform: Benefit Changes

- **Employee Achievement Awards** – Act codifies Treasury regulations, specifically stating cash, cash equivalents, gift certificates are not considered “tangible personal property” and cannot be given on a tax-free basis.
  - Exclusion remains for items given as part of a “qualified plan awards”
  - Qualified plan awards may not discriminate in favor of highly compensated employees

# Tax Reform: Benefit Changes

- **Employer Credit for Paid Family & Medical Leave** – creates a credit employers can qualify for if they meet certain criteria and pay wages while an employee utilizes family or medical leave
  - To qualify employers have to have a written program providing all qualifying full-time employees with at least two weeks of paid family and medical leave
  - Part-time employees must be provided a commensurate amount of leave on a pro rata basis
  - Leave program must be provided at least 50% of the wages normally paid to an employee
  - Credit is equal to 12.5% of the amount of wages paid, increased by .25% for each percentage point by which rate of payment exceeds 50%
  - Credit is not available for wages paid in taxable years beginning after Dec. 31, 2019

# Tax Reform: Exec Comp

- **Sec. 162(m) - \$1 million limit on compensation for covered employees beginning on Jan. 1, 2018:**
  - Repeals exemption for performance-based compensation
  - Expands “covered employee” definition to include:
    - CFO/principle financial officer is now covered
    - All individuals who hold the position of either principal executive officer or principal financial officer at any time during the taxable year are now covered employees
    - Includes officers whose total compensation is required to be disclosed to shareholders, 3 highest-paid officers other than the principal executive officer or principal financial officer
  - Applies to taxable years beginning after Dec. 31, 2017
  - Transition rule applies for written binding contracts in effect on Nov. 2, 2017

# Tax Reform: Exec Comp

## ➤ Excise Tax for Tax-Exempt Employers

- 21% tax on remuneration, including non-cash benefits, above \$1 million for highest five compensated executives.
- Tax does not apply to tax-qualified retirement plans, amounts that are excludible from the covered employee's gross income.
- Does include parachute payments

# Additional Tax Issues: Cadillac Tax Mobile Workforce

# Cadillac Tax on Employer-Sponsored Health Care

- **40% tax on employer-sponsored health benefits exceeding certain thresholds**
  - Estimated to be \$11,000 for self-only coverage and \$29,750 for family coverage in 2022
- Two-year delay of the 40% “Cadillac Tax” was included in the bill passed by Congress in Jan. to avoid a government shutdown
- New effective date is 2022
- WorldatWork continues to work with American Benefits Council and the Fight the 40 Alliance to fully repeal this tax

# Mobile Workforce State Income Simplification Act

- Tax simplification bill sets a national threshold for when states can collect income tax from individuals that travel to their state to conduct business
  - States could collect tax only for individuals performing employment duties for more than 30 calendar days
  - Passed the House by voice vote on June 20
  - Bi-partisan legislation;
    - HR 1393 (57 cosponsors, 37Rs & 20Ds - House)
    - S 540 (60 cosponsors, 34Rs, 24Ds & 1Is - Senate)

# Healthcare/Affordable Care Update



# Healthcare/Affordable Care Update

- Individual mandate was zeroed out in tax reform bill
- Employer mandate and reporting requirements remain intact
- Don't expect action on comprehensive healthcare reform this year
- HSA update:
  - IRS recently reduced the 2018 maximum contribution limit to a HSA for individuals with family coverage to \$6,850 (previous limit was \$6,900) effective immediately
  - Advocates are requesting transitional relief from the IRS, asking IRS not to enforce the new limit for calendar year 2018

# Department of Labor Priorities

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## ➤ FLSA Update

- Continue to wait on DOL to issue proposed overtime rules, for now the \$455 per week salary test remains the law
  - Latest official word from DOL is that the Noticed of Proposed Rulemaking is scheduled to be released in January per the spring regulatory agenda
- Department has started publishing opinion letters, <https://www.dol.gov/whd/opinion/flsa.htm>
  - Opinion letters are provided to help employers, employees, and other members of the public understand their rights and responsibilities under the law

# Department of Labor Priorities

## ➤ FLSA Update

- Payroll Audit Independent Determination “PAID” Program
  - Facilitates resolution of potential overtime and minimum wage violations under FLSA without litigation
  - Employers are encouraged to conduct self-audits, and if they discover overtime or minimum wage violations, to self-report those violations, correct mistakes and provide 100% of back wages due to their affected employees.
  - Goals are to resolve claims quickly, improve compliance and ensure employees receive the back wages they are owed
  - <https://www.dol.gov/whd/paid/>
  - Member Only Webinar June 5



# Department of Labor Priorities

## ➤ Fiduciary Rule

- March 15, 2018: Fifth Circuit vacated the fiduciary rule
- May 2, 2018: Decision to deny intervenor status to AARP and certain states announced
- May 16, 2018: California, New York and Oregon filed a motion seeking a rehearing of the May 2 ruling
- DOL released a temporary enforcement policy regarding the partially implemented fiduciary rule, which requires brokers to act in the best interests of their clients in retirement accounts

# Department of Labor Priorities

## ➤ Apprenticeship Program

- President Trump issued an Executive Order June 15, 2017 expanding apprenticeships in America

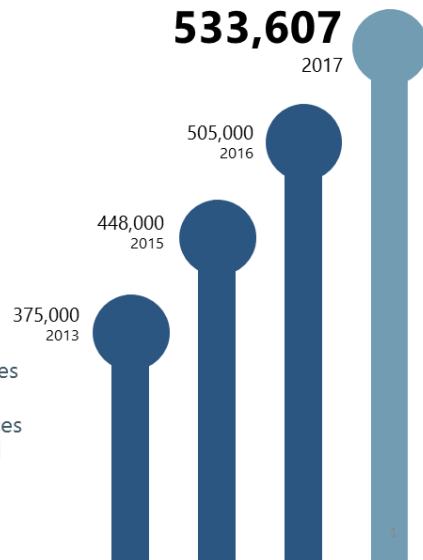
### Apprentices National Growth Chart

42%

GROWTH SINCE 2013

#### Key Facts

- The annual average of active apprentices for the last 20 years = 425,416.
- The current number of active apprentices is 125% higher than the 20 year annual average (533,607/425,416).



# Paid Leave

# Paid Leave

- **Workflex in the 21<sup>st</sup> Century Act (H.R. 4219), Sponsored by Rep, Mimi Rogers (R-Calif.)**
  - Amends Employee Retirement Income Security Act (ERISA)
  - Participating employers would extend paid leave to all full-time and part-time employees
  - Paid leave requirements would be scaled to the size of the employer's workforce and the tenure of the employee, allowing employers to design a leave plan that meets the needs of the organization and its employees.
  - Employers must offer at least one workflex arrangement to each eligible employee
  - ERISA covered plans would pre-empt state and local paid leave and workflex laws



# Executive Compensation

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- SEC new commissioners sworn in:
  - Robert J. Jackson, Jr, term exp. 2019
  - Hester M. Peirce, term exp. 2020



# Executive Compensation

- Proposed Dodd-Frank Rules on “Long-Term” regulatory agenda
  - Pay vs. Performance
  - Hedging Policy Disclosure
  - Clawback Policy
  
- SEC CEO-Pay Ratio Rule
  - Starting to see early results of the ratio disclosure rule
  - Companies are required to published the ratio for their first fiscal year beginning on or after Jan. 1, 2017

# Executive Compensation

## ➤ Proxy Advisory Firm Legislation

- HR 4015 Corporate Governance Reform and Transparency Act of 2017
- Sponsored by Rep. Sean Duffy (R-Wisc.)
- Requires firms to register with the SEC, disclose potential conflicts of interest and establishes a process for companies to dispute proxy advisory firm's recommendations to shareholders
- Passed the House vote 238-182
- WorldatWork is working with US Chamber of Commerce and others to advance a companion bill in the Senate

# EEOC Strategic Plan

# EEOC Strategic Plan

- Waiting on Senate to confirm Trump's nominees, Janet Dhillon (chair), Daniel Gade (commissioner) and Sharon Fast Gustafson (general council)
- FY18 Budget saw an increase for sexual harassment projects, both enforcement and prevention
- Wellness Rules: ADA and GINA wellness rules have been vacated, new rules likely not happening until 2019

# U.S. Supreme Court



*Front row, left to right: Associate Justice Ruth Bader Ginsburg, Associate Justice Anthony M. Kennedy, Chief Justice John G. Roberts, Jr., Associate Justice Clarence Thomas, Associate Justice Stephen G. Breyer. Back row: Associate Justice Elena Kagan, Associate Justice Samuel A. Alito, Jr., Associate Justice Sonia Sotomayor, Associate Justice Neil M. Gorsuch. Credit: Franz Jantzen, Collection of the Supreme Court of the United States*



# U.S. Supreme Court

- FLSA Case, *Encino Motocars v. Navarro*
- Holding: Because service advisors at car dealerships are “salesm[e]n . . . primarily engaged in . . . servicing automobiles,” 29 U. S. C. §213(b)(10)(A), they are exempt from the Fair Labor Standards Act’s overtime-pay requirement.
- Justice Thomas, writing for the majority rejected the principle of narrow-construction for FLSA exemptions – this is something to watch for future FLSA exemption cases.

# Election Issues to Watch

# 2018 Election Issues to Watch

- Democrats are expected to do well in the midterms.
- It's possible for Democrats to win majority control of both the House and Senate.
- Democrats Priorities if they control Congress:
  - Sexual Harassment/Discrimination #MeToo #TimesUp
  - Equal Pay
  - Minimum Wage
  - Paid Leave



# Questions?

# Contact Us

## Global Headquarters

14040 N. Northsight Blvd.  
Scottsdale, AZ 85260 USA

## Washington, D.C. Office

1100 13<sup>th</sup> St. NW, Suite 800  
Washington, DC 20005 USA

## Telephone

877-951-9191 (United States and Canada)  
+1 480-922-2020 (other countries)

## Fax

480-483-8352

## Email

[customerrelations@worldatwork.org](mailto:customerrelations@worldatwork.org)

## Website

[worldatwork.org](http://worldatwork.org)